

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>DANIEL TODD AUGUSTINE,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>JESSICA SCHREURS, Director of Nursing/RN, in her individual capacity,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: right;">4:20-CV-04072-KES</p> <p style="text-align: center;">ORDER DENYING PLAINTIFF'S MOTION FOR THE APPOINTMENT OF COUNSEL</p>
---	--

Plaintiff, Daniel Todd Augustine, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Docket 1. This court denied Jessica Schreurs's motion for summary judgment based on qualified immunity. Docket 43 at 23. Now, Augustine moves for the appointment of counsel. Docket 45.

"A pro se litigant has no statutory or constitutional right to have counsel appointed in a civil case." *Stevens v. Redwing*, 146 F.3d 538, 546 (8th Cir. 1998). Under 28 U.S.C. § 1915(e)(1), "[t]he court may request an attorney to represent any person unable to afford counsel." When determining whether to appoint counsel to a pro se litigant, the court considers "the factual complexity of the case, the ability of the indigent to investigate the facts, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of the legal issues." *Abdullah v. Gunter*, 949 F.2d 1032, 1035 (8th Cir. 1991) (citing *Johnson v. Williams*, 788 F.2d 1319, 1322-23 (8th Cir. 1986))

(holding that the district court erred when it denied the plaintiff's motion for counsel solely because the plaintiff did not raise factually complex issues)).

Here, Augustine claims that he cannot afford to retain private counsel, that the "issues are factually complex," and that the denial of summary judgment created genuine issues of material fact. See Docket 45.

But Augustine has proven that he can clearly communicate his position before the court. At this time, the court believes that Augustine can adequately present his claims. Further, the issues are not factually complex. Augustine's motion for the appointment of counsel (Docket 45) is denied but the court remains open to the possibility of appointing counsel if this case proceeds beyond the motion stage.

Thus, it is ORDERED:

1. That Augustine's motion for the appointment of counsel, Docket 45, is denied.

Dated July 28, 2021.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE